

M. Lane

AO 91 (Rev. 08/09) Criminal Complaint

FILED

UNITED STATES DISTRICT COURT 2011 JAN 26 PM 2:47

for the
Western District of TexasCLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXASBY _____
DEPUTYUnited States of America
v.
Nicholas Daniel TOVAR

Case No.

A-11-M-52

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of November 2010 - January 25, 2011 in the county of Bell, Travis, and Williamson in the
Western District of Texas, the defendant(s) violated:

Code Section

Offense Description

Title 18 U.S.C., Section 922 (a) (6)-
Title 18 Section 2 and Section 371-False Statements in the Acquisition of a Firearm from a Licensed Dealer
Aiding and Abetting, Conspiracy

This criminal complaint is based on these facts:

☒ Continued on the attached sheet.

Kristi R. McPartlin

Complainant's signature

Kristi R. McPartlin, ATF Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

1/26/11

City and state:

AUSTIN, TX

Robert Pitman

Judge's signature

ROBERT PITMAN

U.S. MAGISTRATE JUDGE

Printed name and title

AFFIDAVIT

1. I, Kristi R. McPartlin, being duly sworn, depose and state that I am a Special Agent for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, and have been so employed since August 2002. I am a graduate of the Federal Law Enforcement Training Center and the ATF National Academy. That the affiant, as an ATF Special Agent, is empowered to make arrests, conduct investigations, and execute search and arrest warrants relative to Federal firearms offenses pursuant to Title 18 and Title 26 of the United States Code.
2. This affidavit sets forth facts that establish probable cause to believe that evidence of the commission of violations of Title 18 U.S.C., Section 2, 371, Section 922 (a) (6)
3. Your affiant is currently investigating alleged violations of Federal firearms laws by: Giovanna RIVERA, W/F, DOB- 02/24/1989 and Nicholas Daniel TOVAR, W/M, DOB- 01/15/1991. RIVERA and TOVAR have no prior criminal history.
4. This investigation involves several subjects, including RIVERA and TOVAR, allegedly conspiring with Jose LIRA and Aurelia Ochoa HERNANDEZ to unlawfully acquire firearms from federally licensed firearms dealers.
5. That on or about December 14, 2010, your affiant received information from Guns Galore (a Federal Firearms Licensee) in Killeen, Texas in regards to suspected "straw purchases" made by Anna Cecilia PEREZ, W/F, DOB- 03/10/1972 and Monica Beltran PASTOR, W/F, DOB- 01/16/1978 on December 6, 2010 and December 14, 2010. PEREZ acquired one (1) firearm on December 6, 2010 and PASTOR acquired two (2) firearms on December 6, 2010 and one (1) firearm on December 14, 2010. The firearms acquired by PEREZ and PASTOR are as follows:
 - PEREZ- Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1972CC0647
 - PASTOR- Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1965OP3311
 - PASTOR- IO Inc., Model AK47-C, 7.62 X 39mm caliber rifle bearing serial # 005032
 - PASTOR- Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1965HI1839
6. The affiant knows that "straw purchasing" firearms involves one subject filling out firearms transaction forms to acquire firearms from a licensed

firearms dealer for another subject/s who either cannot pass the background check to purchase firearms or is a person/s involved in illegal activity who does not wish to place their name on the transaction forms. The "straw purchaser" must provide a false statement on the transaction forms by stating that they are the actual purchaser of the firearm/s, when in fact they are not the actual purchaser, but are just filling out the forms for someone else who is paying for the firearms and who usually takes possession of the firearms almost immediately after they are purchased. This is a violation of 18 U.S.C., Section, 922(a) (6) and aiding, abetting, or conspiring to commit said offense would be in violation of 18 U.S.C., Sections 2 and 371.

7. That on or about December 18, 2010, your affiant received information from Guns galore (a Federal Firearms Licensee) in Killeen, Texas in regards to suspected "straw purchases" made by Krystal AYALA, W/F, DOB-10/27/1986. AYALA acquired two (2) firearms on December 18, 2010. The firearms acquired by AYALA are as follows
 - Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1973EP3786
 - Century International Arms, Model GPWASR 10/63, 7.62 X 39mm caliber rifle bearing serial # 1984PH4506
8. On December 21, 2010, your affiant interviewed Krystal AYALA. AYALA admitted that she had purchased the firearms for her friend's uncle, Joe (later identified as Jose LIRA). AYALA stated that she did not know what happened to the firearms. AYALA stated that Joe had approached her about purchasing firearms for him. AYALA said that Joe had offered to pay her one hundred dollars for each firearm that she purchased.
9. AYALA went to Guns Galore with Joe's niece, Giovanna RIVERA, and Nick TOVAR to Killeen to purchase the firearms. AYALA said that Joe told her to purchase the AK-47 style rifles. AYALA also said that Giovanna RIVERA went into the gun store to help oversee the firearms purchase.
10. According to AYALA, Joe provided the cash for the firearms transaction. Joe gave Giovanna the money and Giovanna gave the money to AYALA. AYALA said she filled out the ATF Form 4473 and purchased two AK-47 style rifles. After the transaction, she, RIVERA, and Nicholas TOVAR drove back to Austin and met Joe in the parking lot of Walmart and 183 and IH-35. AYALA said Joe was in his truck and he took the guns and put them into his vehicle, which your affiant has identified as a 1997 Ford F-Series Pickup truck bearing Texas LP# 45CKL4. Joe paid her the \$100 per firearm. AYALA also said that Nicholas TOVAR had told her that "they" scratched the serial numbers off of the firearms. AYALA said she

had never seen Joe and Nicholas TOVAR scratch the serial numbers off of any guns, but she again stated that she was told that by Nicholas TOVAR.

11. AYALA said that Nick TOVAR told her that his uncle Joe said that if she, AYALA, knew of anyone that was interested in purchasing firearms for them to let them know and they would give her a "finder's fee" of \$100 per person. AYALA said that she thought that Joe, TOVAR and RIVERA traveled around the area to buy firearms at different locations.
12. AYALA said that Joe went through the process of explaining to her how to fill out the ATF Form 4473. AYALA stated that Joe told her to fill out the form by answering "yes" to question number one (The question about being the actual purchaser of the firearm) and "no" to all the other questions. Joe also told her not to answer question number twelve.
13. On December 29, 2010, your affiant interviewed Monica PASTOR. During the course of this interview PASTOR admitted that she had purchased the firearms for some guy named Joey. Joey allegedly worked as a bouncer at a club off of Neches. PASTOR did not know Joey's last name (Joey was later identified as Jose LIRA). She then proceeded to say that she was not the actual purchaser of the firearms. She again stated that she bought them for Joey (the bouncer).
14. PASTOR claimed that she was recruited to purchase the firearms by her friend Anna PEREZ. According to PASTOR, Anna had previously purchased firearms for Joey, but she [PASTOR] did not know where. PASTOR said that Joey gave her the money, one hundred dollars (\$100), for every firearm that she purchased.
15. PASTOR told the ATF Agents that Joey followed her and Anna out to Killeen and watched them from somewhere while they purchased the firearms. PASTOR also said Joey has sent another guy with her and Anna to the gun store. PASTOR did not know who the other guy was, but said he followed them in a small white car.
16. PASTOR said the guy in the white car went into the gun store and gave her and Anna a signal (touching the firearm) for the guns he wanted them to purchase. ATF SA McPartlin showed PASTOR a Texas Driver's License Photo of Nicholas Daniel TOVAR. The photo had all the identifiers for Nicholas Daniel TOVAR covered up. PASTOR told the ATF Agents that the photo was the same person that was sent into the gun store and gave them the sign for the guns they were supposed to purchase.
17. PASTOR said that Joey told her he had a criminal background and he couldn't get the guns. PASTOR said Joey had told her that no one would ever know that the guns were the ones she [PASTOR] had purchased.

18. PASTOR said she had initially kept the receipts for the guns purchased, but then stated that Joey had taken them from her several days later.
19. The second time PASTOR bought firearms, she claimed that Joey followed her up to Killeen and watched her from an unknown location purchase the firearms. Once she was done buying the firearms, PASTOR was called by Joey and he instructed her to drive back to Austin. On the drive back, PASTOR said that Joey told her to meet him at the Rudy's BBQ on IH-35. PASTOR transferred the firearms to Joey at the Rudy's BBQ. PASTOR saw LIRA place the firearms in the back of his 1997 Ford F-Series Pickup truck.
20. Your affiant discovered the identification of "Joe" and "Joey" by searching old reports through the Austin Police Department records. Your affiant discovered a report generated on November 10, 2010 (Austin Police Department General Offense # 2010-5059987). This report was called in by a female by the name of Isela Esmeralda GUADARDO, W/F, DOB-05/05/1974. GUADARDO told officers from Austin Police Department that her ex-boyfriend, Jose LIRA, was threatening her.
21. GUADARDO told Austin Police officers that LIRA was a member of the "Tango Blast" gang. She also said that LIRA is involved in a lot of illegal activity. GUADARDO said LIRA was involved with illegal alien smuggling, along with his mother, and also transporting firearms into Mexico. GUADARDO also claimed that LIRA had told her that if he ever got arrested and found out that she had anything to do with it he would make her and her family pay.
22. GUADARDO continued to tell Austin Police officers that LIRA would gather firearms and give them to his mother, Aurelia HERNANDEZ. According to GUADARDO, HERNANDEZ would take the firearms into Mexico to sell.
23. On December 29, 2010, your affiant met with PASTOR and showed her a photo line-up with six (6) similar looking male subjects. PASTOR immediately selected the picture of Jose "Joey" LIRA. She said that this is the subject that she "straw purchased" guns for.
24. Your affiant showed PASTOR a second photo line-up with six (6) similar looking male subjects. PASTOR immediately selected the photo of Nick TOVAR. She stated that this was the subject who also was involved in her "straw purchasing" firearms. This subject followed her to the gun stores and pointed out which guns she was to buy.
25. PASTOR recalled that she had made another "straw purchase" which was in November and before the "straw purchases" she made at Guns Galore

in Killeen. She said that the store was in a strip mall in Cedar Park. She said that Anna was with her and that the person known to ATF as Nick TOVAR went into the store with them. PASTOR said that TOVAR was telling the employees at the store that they were his aunts. TOVAR pointed out to PASTOR the correct guns to purchase.

26. PASTOR said that Nick TOVAR gave her the money to make the buy at the Cedar Park store and that he followed her into the store. She said that he had apparently been in the store before and possibly had bought guns before in this store. She said that after leaving the store she drove a short distance and handed over to him the gun she bought. PASTOR then drove to the Wal-Mart parking lot on 183 just north of I-35 where she met "Joey" (LIRA) at which time he paid her \$100.00 for buying the gun.
27. PASTOR stated that she was given \$100.00 for each gun she bought for LIRA. She said that she bought a total of five (5) guns and was paid by LIRA a total of \$500.00.
28. On January 4, 2011, your affiant met with Krystal AYALA to show her a photo line-up. AYALA immediately chose the photo of Jose LIRA, saying that is the person she knew as "Joe", for whom she "straw purchased" guns.
29. On January 12, 2011, your affiant interviewed Anna C. PEREZ. PEREZ admitted she purchased firearms three times for a friend of hers named "Joey". PEREZ stated that she did not know Joey's last name. PEREZ continued to say that Joey gave her the cash to purchase the firearms. PEREZ also claimed that she did not know what happened to the firearms once she gave them to Joey. PEREZ told the ATF Agents that Joey paid her one hundred dollars per firearm that she purchased.
30. PEREZ started to describe some of her firearms purchases to the ATF Agents. PEREZ first described going to an L-Shaped strip mall to buy guns. She said it was not quite in Cedar Park, but it was up north (in Austin). The place she was describing was Heritage Firearms off of Anderson Mill Road and Highway 183 in north Austin.
31. Next, PEREZ said she had gone to Killeen to purchase some guns. She described what would be Guns Galore. PEREZ stated that one time she had gone to Killeen with Peter TOVAR's son (that would be Nicholas TOVAR), but she had forgotten her Texas identification card. Nick TOVAR ended up having to purchase the firearms because of her forgetting her ID. She continued to say that Nick TOVAR ended up purchasing two (2) firearms that day.
32. Then PEREZ told the ATF Agents that Joey had sent her to a gun show in south Austin located where the old Target store used to be. She said that

transaction occurred a couple of months prior. PEREZ claimed that Joey had taken her to the gun show.

33. PEREZ then stated that she had been to Killeen a second time with a friend of hers named Monica PASTOR.

34. PEREZ said that Joey had asked her [PEREZ] to go to the border to pick up the cash that was used to fund the purchase of the firearms (PEREZ claimed the dollar amount to be somewhere in between fifteen thousand dollars and twenty five thousand dollars). Joey was going to pay PEREZ one hundred dollars for going to the border (two hundred dollars if she had to stay overnight). PEREZ said that she told Joey "NO" because it was not going to be worth it to drive all the way to the border and back for one hundred dollars.

35. Your affiant asked PEREZ where the receipts for all the gun purchases were and PEREZ stated that Joey took all of them because he keeps really tight money records. PEREZ confirmed that Joey asked for the receipts specifically.

36. PEREZ acquired the following firearms for LIRA:

- Bushmaster, Model XM15, 5.56 mm caliber rifle, SN# L519394 (Heritage Firearms-11/12/2010)
- Stage Arms, Model Stag-15, 5.56mm caliber rifle, SN# 116376 (Ray Sparks – 11/13/2010)
- Century International Arms, Model WASR10, 7.62 X 39mm caliber rifle, SN# 1966AC0516 (The Guns Store- 12/1/2010)
- Century International Arms, Model GPWASR10/63, 7.62 X 39mm caliber rifle, SN# 1972CC0647 (Guns Galore – 12/6/2010)

37. Jordan MCCOY, the wife/girlfriend, appears to be on video surveillance on December 17, 2010 at The Gun Store in Cedar Park, Texas. MCCOY appears on video with Giovanna RIVERA. On this occasion, RIVERA purchased two assault rifles and paid cash. The rifles are listed as:

- Century Arms, Model Draco, 7.62 X 39mm pistol, SN# 1968BH4192
- Century Arms, Model WASR 10/63, 7.62 X 39mm rifle, SN# 1969BI4840

38. Your affiant also has knowledge of firearms purchases paid in cash by RIVERA on the following occasion:

- Keltec, Model PLR-16, .223 pistol, SN# P6Z20 (January 3, 2011- Tactical Advantage Firearms)
- CAI, Model Draco, 7.62 X 39 mm pistol, SN# 1968BH1729 (January 3, 2011- Tactical Advantage Firearms)

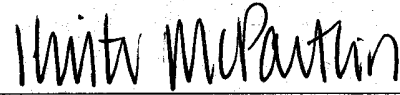
39. Your affiant also has knowledge of RIVERA contacting Tactical Advantage Firearms, on January 21, 2011 at approximately 12:34 p.m. The owner, John Plumb advised ATF that he received a phone call from Giovanna RIVERA.
40. Mr. Plumb stated that RIVERA'S call came from phone number 512-947-4501. He stated that when he answered the phone call it was evident that RIVERA didn't realize that the call had gone through. Plumb stated that RIVERA did not say anything and that he could hear a male voice in the background yelling at RIVERA. He heard the male voice saying that RIVERA needed to get on this. The male voice said I want you to get these things. He could be heard yelling at her and telling her to get the others to the store (gun store) and have them buy something (guns).
41. Mr. Plumb told ATF Agents that once RIVERA realized that the call when through she engaged Plumb in conversation and she stated that she wanted to know if Plumb had any Draco "AK47 style" pistols or PLR16 "AR15 style" pistols in stock. She wanted to know if her friends had called Plumb. Plumb asked her what are the names of her friends were so he would know they are her referrals. RIVERA replied, "It's Davis, no no it's Scott. DAVIS is his last name." She also mentioned a female friend "Tracey" who is believed to be alleged "straw purchaser" Tracey CASTILLO.
42. According to Mr. Plumb, RIVERA said that she would bring her friends over to Plumb's business to purchase the guns that day. Plumb told her he did not currently have the guns in stock and that he was waiting for a UPS delivery. Plumb suggested not to bring them until he knew the guns came in.
43. Your affiant also has knowledge of TOVAR acquiring the following firearms and paying for them in cash:
- CAI, Model GPWASR10/63, 7.62 X 39 mm rifle, SN# 1965NO2028 (11/29/2010 - Guns Galore)
 - CAI, Model GPWASR 10/63, 7.62 x 39 mm rifle, SN # 1965OP3660 (11/29/2010 – Guns Galore)
 - Bushmaster, Model XM15, 5.56 mm caliber rifle, SN# BF1590950 (10/27/2010 – Heritage Firearms)
 - DPMS, Model A15, 5.56 mm caliber rifle, SN# F046857 (10/27/2010 – Heritage Firearms)
44. Your affiant has knowledge of TOVAR contacting The Gun Store in Cedar Park on January 14, 2011. Your affiant was made aware of a phone call placed to the business by Nicholas TOVAR.
45. Your affiant was told that Nicholas TOVAR had called from Aurelia HERNANDEZ's phone number of (512) 662-4665. TOVAR had called asking if the store had any Draco 7.62 X 39 mm firearms in stock. TOVAR

was told that The Gun Store only had one Draco 7.62 X 39mm firearm currently in their inventory. TOVAR asked if the store could put that particular firearm aside and he [TOVAR] would come by and pick it up later that day.

46. Your affiant witnessed Nicholas TOVAR enter The Gun Store alone. TOVAR went to the counter and began talking to the salesperson. TOVAR began filling out the ATF Form 4473 for the purchase of the Draco 7.62 X 39mm pistol. During the transaction, ATF SA McPartlin witnessed TOVAR looking at large capacity (drum style) magazines that fit the Draco pistol.
47. When TOVAR was done filling out the ATF paperwork, he gave it over to the salesperson. The salesperson looked at the paperwork and realized that TOVAR was only twenty years of age. TOVAR was told that he could purchase a pistol because TOVAR was underage. TOVAR did not realize that he had to be twenty one years of age to purchase a pistol.
48. TOVAR then decided to purchase the following firearm:
 - Century Arms, Model GP WASR 10/63, 7.62 X 39 mm rifle bearing serial # 1983NR4218
49. January 15, 2011, Tactical Advantage Firearms received the attached email from Nicktovar78721@gmail.com in response to an ad in TexasGunTrader.com. Tovar provided a phone number of 512-317-9148. Tovar stated that he wished to buy a Draco pistol "AK47." On January 14, 2011, TOVAR had attempted to purchase the exact same gun at The Gun Store in Cedar Park, Texas, but the transaction was denied because you must be 21 years old to buy a pistol from a licensed gun dealer and TOVAR is not 21.
50. The following is a verbatim statement from the email sent by TOVAR to Tactical Advantage Firearms. **"Hi my names Nick and i wash interestead in buying one of those draco. If you can please contact me at my cell 512 317 9148. I would really be thank full"**

51. Based on the aforementioned facts stated above, your affiant has probable cause to believe that evidence of violation of Title 18 U.S.C., Section 2, 371, and Section 922 (a) (6) have been committed by Giovanna Alberta RIVERA and Nicholas Daniel TOVAR.

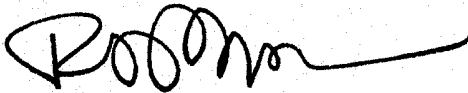
I, your affiant, Kristi R. McPartlin, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Kristi R. McPartlin

ATF Special Agent

Sworn and subscribed to me on this 26th day of January 2011.



Robert Pitman

United States Magistrate Judge